IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION No. 6229 of 1998

DR. SHAIKH ABDUL HASIB
ABDUL MANNAN
adult, occupation at present nil,
residing at Padmanjali Complex,
Flat No.4, 106, Modikhana,
Solapur. ... Petitioner

V/S

1. UNION OF INDIA
through its General Manager,
Central Railway, C.S.T.,
Mumbai 400 001.

2. Chief Personal Officer,
Central Railway, C.S.T.,
Mumbai 400 001.

3. Chairman,
Railway Board, Rail Mantralaya,
New Delhi. ... Respondents

Shri S. G. Kudle, advocate for petitioner
Shri Suresh Kumar, advocate for respondents.

CORAM: SHRI R.M.S. KHANDEPARKAR
&
SMT. ROSHAN DALVI JJ.

DATE: 28/4/2006

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR J.)

1. Heard learned Advocates for the Petitioner and the Respondent. The Petitioner challenges the judgment and order dated 23rd July 1998 passed by the Central Administrative Tribunal dismissing OA No. 732 of 1997 filed by the Petitioner. The said appeal was filed by the Petitioner seeking a direction to the Respondent to accept his date of birth as was recorded in the service register supported by the date of birth Certificate issued by the Solapur Municipality and consequently to direct the Respondent to retire the Petitioner on his attaining the age of 58 years on the basis of his date of birth as 6th May 1940 and not as 5th September 1939.
2. The Petitioner joined the services in the Central Railway as Assistant Surgeon Grade I in Group 'C' some times in the year 1965.
3. An application came to be filed by the Petitioner on 2nd September 1985 requesting for alteration in the recorded date of birth of the petitioner in the service records of the Respondent. On 3rd July 1997 the petitioner approached the Respondent with a request that the Respondent shall not retire the Petitioner on the basis of the date of birth as mentioned in SSC Certificate and requested that he may be retired on the basis of the date of birth as shown in the service records. The application was sought to be supported

by a domicile certificate dated 26th May 1959. On 7th July 1997 D.R.M. (B) Solapur issued a letter to the effect that the Petitioner's date of birth was shown as 6th May 1940 but in his SSC Certificate the same was shown as 5th September 1939 and hence it was ordered to retire the Petitioner on the basis of his date of birth i.e. 5th September 1939.

4. Being aggrieved the Petitioner filed A.O. No. 732 of 1997. During the pendency of the said appeal, an order came to be passed by the Respondent on 25th August 1997 to retire the Petitioner with effect from 30th September 1997.
5. On 23rd July 1998 after hearing the parties the said A.O. 732 of 1997 was dismissed by the impugned judgment.
6. It is the case of the Petitioner that the date of birth of the Petitioner as disclosed in the certificate issued by the Solapur Municipality is 6th May 1940, though it is not so reflected from the service records, but the fact remains that the Petitioner was actually born on 6th May 1940 and this is also supported by the passport issued in favour of the Petitioner by the Government and therefore the Respondent should not have retired the Petitioner on 30.9.1997, much prior to completion of 58 years considering his date of birth to be 6th May 1940. It is further the contention of the Petitioner that the date of birth being wrongly recorded in the service records and as there was a notification issued on 26th June 1985 to enable the employees to correct their date of birth in

the relevant records, the Petitioner had filed an application on 2nd September 1985 for necessary alteration of the date of birth in the service records of the Petitioner. However, the said application was kept pending without being disposed of and merely, on assumption that the Petitioner was born on 5th September 1939 that he was made to retire on 30th September 1997.

7. It is further the contention of the Petitioner that when he approached the Respondent in July 1997 and further before the Tribunal in August 1997 he did not approach for any change in the service records in relation to his date of birth, but his request was essentially to the effect that he should not be retired prior to the completion of the period of 58 years on the basis of his true date of birth which is reflected from the birth certificate issued by the Solapur Municipality and having ignored the same, the tribunal has acted illegally while dismissing the appeal filed by the Petitioner.

8. On the other hand it is the case of the respondent that the correct date of birth of the Petitioner was recorded in the service records of the Petitioner at the time of his entry based on the documentary evidence regarding his date of birth furnished to the Respondent by the Petitioner himself. Further by the application which was filed in the year 1985, the Petitioner himself had admitted that as per the service records his date of birth was 5th September 1939 and solely on the

basis of a certificate issued by the Municipality, it was sought to be changed for 6th May 1940, and that too after a period of 20 years from the date of entry in the service. Considering the same according to the Respondent no fault can be found with the impugned order dated 26th May 19976 passed by the Respondent retiring the Petitioner with effect from Petitioner 30th September 1997.

9. The learned Advocate for the Respondents has sought to place reliance in the decision in the matter of **U.P. Madhyamik Shiksha Parishad and ors. vs. Raj Kumar Agnihotri,** reported in **AIR 2005 S. C. 2491** and in the matter of **Union of India vs. Harnam Singh,** reported in **AIR 1993 S. C. 1367**, in support of the contention that no fault can be found with the impugned order.

10. Undisputedly the service records of the Petitioner discloses the date of birth of the Petitioner to be 5th September 1939 and the said date was recorded on the basis of the documentary evidence produced by the Petitioner himself at the time of his entry in the service of the Respondent. Undisputedly, the documentary evidence was in the form of SSC Certificate. It is also not in dispute that the birth certificate stated to have been issued by the Solapur Municipality was not produced by the Petitioner at the time of entry in the service. Such certificate was sought to be produced only in September 1985. However, the application

filed by the petitioner was not granted by the respondent, nor any change was made as regards the date of birth of the petitioner in his service records. Being so even on the date of 26th August 1997 as well as on 30th September 1997 the service records of the Petitioner with the Respondent disclosed his date of birth as 5th September 1939.

11. It is also a matter of record that the application was filed by the Petitioner on 2nd September 1985 for alteration of recorded date of birth of the Petitioner in the service records of the Petitioner with the Respondents. In the said application, it was specifically stated by the Petitioner himself that the date of birth which was initially recorded in the service records was on the basis of the SSC Certificate. The revised date of birth which was requested by the Petitioner was of 6th May 1940 and the said request was on the basis of birth certificate from Solapur Municipality and a photo copy of domicile certificate issued by the Executive Magistrate, Solapur. Undisputedly the said application was not disposed of by the Respondent. The contention of the Respondent in that regard is that the same was not pursued by the Petitioner, apart from the fact that the said application was filed nearly after 20 years, after the date of entry and therefore no fault can be found for ignoring the request for the alteration of the date of birth. The contention that the application was not disposed of on account of failure on the

part of the Petitioner to pursue the same cannot by itself be a justification for non disposal of the said application. It is not sufficient to persuade us about the justification for the inaction on the part of the Respondent in that regard. However, in the facts and circumstances of the case, the contention, at the same time, cannot be out-right rejected as there is nothing on record to discard the contention that apart from filing the said application, no attempt was ever made to pursue the said application by the Petitioner at any time prior to 3rd July 1997. It is the case of the Petitioner himself that it was only after having heard in July 1997 that the Petitioner was likely to be retired on the basis of the date of birth as shown in his SSC certificate that he approached the Respondent with a request not to retire him on the basis of the date of birth recorded on the basis of the SSC Certificate but to take into consideration the birth Certificate issued by the Solapur Municipality and the domicile certificate issued by the Executive Magistrate for that purpose. This evidently discloses that after filing the application dated 2nd September 1985 till 3rd July 1987 the Petitioner made no efforts to seek changes in the recorded date of birth of the Petitioner in the the service records with the Respondents. That apart the application dated 2nd September 1985, a copy of which is placed on record, perusal thereof apparently discloses that the changes in the recorded date of birth was sought for

twenty years after the entry of the Petitioner in the service of the Respondent and that too without disclosing the justification for non- production of the birth certificate issued by Solapur Municipality as well as the domicile certificate issued by the Executive Magistrate at the time of entry in the service with the Respondent. There is absolutely no justification disclosed in the application as to on what basis the date of birth was shown as 6th May 1940 in the SSC Certificate. Whatever might be the reason for alleged discrepancy in the recording of the date of birth in the Municipal records and in the School records, the fact remains that absolutely no reason for alleged discrepancy was disclosed in the said application. It is pertinent to note that even in the application before the Tribunal or even in the memo of the petition before this court, there is no explanation in that regard. Obviously, therefore , in these circumstances, merely because the application dated 2nd May 1985 was not disposed of by the Respondent, that cannot be a justification to contend that the Petitioner could not have been retired from 30th September 1997 as the service records of the petitioner with the Respondent clearly disclosed the Petitioner's date of birth as 5th September 1939. In such circumstances, if the application of 2nd September 1985 remained to be disposed till his retirement, it is the Petitioner himself to be blamed. Considering the settled law

on the point of the non-entitlement of the employee to seek alteration in the service records in relation to the date of birth after the lapse of considerable period of time from the date of joining the service, no fault can be found with the Respondent for ignoring the application dated 2nd September 1985 . There was no obligation on the part of the Respondent to grant any such request for alteration of the date of birth of the Petitioner after 20 years of entry into the service and that too, in the circumstances where there was no disclosure of justifiable cause for such changes.

12. The contention that the request of the petitioner in 1977 was not for change in the service records as regards the date of birth is concerned, but it was merely for his retirement on the basis of his alleged true date of birth as 6th May 1940 is totally devoid of substance. Even though the petitioner had made request to retire him on the basis of his alleged true date of birth as 6th May 1940, if accepted, it would have resulted in assuming the date of birth of the petitioner as one which is not recorded in the service records. To accept the date of birth beyond the service records for the purpose of retirement would impliedly amount to accepting the changed date of birth in the service records in that regard. In other words, an order which the petitioner could not succeed in getting on his application filed 20 years after his entry in the service records, he would have attained it almost after a

period of 32 years of his entry in the service. As rightly submitted by learned advocate for the respondent, the decisions of the Apex Court in the case of **Harnam Singh,** (supra) as well as in **Raj Kumar Agnihotri's** case (supra) clearly justify the action on the part of the respondent in retiring the petitioner in September 1997.

13. In Harnam Singh' **s** case the Apex Court has clearly ruled that attempt made by the employee to correct the date of birth after five years was throughly unjustified and therefore rejection of relief in that regard did not require any interference. In **Raj Kumar' s** case the Apex Court has held that the entries made in the service records on the basis of the information furnished by the employee at the time of his entry in the employment cannot be allowed to be changed just a few years before retirement or at the fag end of his service tenure.

14. It is pertinent to note that it is not the grievance of the petitioner that the initial entry of date of birth was wrongly made by the respondent or that it was contrary to what was informed by the petitioner to the respondent or that it was contrary to the documentary evidence produced by the petitioner in that regard at the time of his entry in the service. Once the entry of date of birth is made in service records by the employer on the basis of the information furnished in that regard by the employee himself at the time of entry in

the service and this fact is not disputed, nor it is sought to be corrected immediately after the entry in the service records, no grievance as regards the recorded date of birth of the employee can be entertained thereafter, and certainly not at the fag end of the service tenure.

15. Considering the facts and circumstances of the case and materials on record, therefore, no fault can be found with the decision of the respondents to retire the petitioner on 30th September 1997 and for the same reason, the order passed by the Central Administrative Tribunal cannot be found fault with.

16. It is true that in the Domicile Certificate issued by the Executive Magistrate on 26th May 1959, the date of birth is recorded as 6th May 1940 and it is stated to have been on the basis of the extract from Sholapur Municipality. It is also true that in the passport issued to the petitioner, the date of birth is shown as 6th May 1940. Apparently both these documents are based on the birth certificate issued by the Sholapur Municipality. However, it is not understood as to what prevented the petitioner from producing the birth certificate issued by Sholapur Municipality, at the time of entry in the service records and to establish that the date recorded in the SSC certificate was incorrect. It is pertinent to note that no document in that regard was ever produced either before the respondent or before the Tribunal or even before this Court.

The petitioner seeking equitable relief in writ jurisdiction has to disclose every material fact. Any suppression of material fact itself can be sufficient to reject the relief in writ jurisdiction. Considering the fact that the petitioner has suppressed this material information from this court, the same also justifies the rejection of relief to the petitioner.

17. For the reasons stated above, therefore, the petition fails and is hereby dismissed. The rule is discharged. No order as to costs.

(SMT. R.S. DALVI J.) (SHRI R.M.S.KHANDEPARKAR J)